

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA and  
THE COEUR D'ALENE TRIBE,

Plaintiffs,

v.

MASCOT MINES, INC.; UNITED RESOURCE  
HOLDINGS GROUP, INC.; NABOB  
SILVER-LEAD COMPANY; and ZANETTI  
BROTHERS, INC.

Defendants.

10-2008-0066

Case No. CV08-383-N-EJL

Case No. CV09-664-N-EJL

**CONSENT DECREE BETWEEN THE UNITED STATES, THE COEUR D'ALENE  
TRIBE AND ZANETTI BROTHERS, INC.**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), alleging that Settling Defendant Zanetti Brothers, Inc., is jointly and severally liable for costs incurred and to be incurred by EPA in responding to the release or threat of release of hazardous substances at or in connection with Operable Unit 3 ("Coeur d'Alene Basin Site") of the Bunker Hill Mining and Metallurgical Complex Superfund Site ("Site") in Northern Idaho.



Bunker Hill CDA De Minimis (Zanetti), 9/23/10

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Coeur d'Alene Basin Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Coeur d'Alene Basin Site. As of November 30, 2008, EPA has incurred approximately \$183,568,322.73 in connection with the Coeur d'Alene Basin Site.

C. The United States, acting by and through the United States Department of the Interior ("DOI") and United States Department of Agriculture ("USDA"), and the Coeur d'Alene Tribe ("Tribe") are co-trustees of injured natural resources at the Coeur d'Alene Basin Site, including but not limited to certain migratory natural resources such as fish, wildlife, birds, biota, and water. The Tribe filed an amended complaint in Case No. CV09-664-N-EJL prior to the lodging of this Consent Decree, alleging that Settling Defendant is liable for natural resource damages pursuant to Section 107(a) of CERCLA in connection with the Coeur d'Alene Basin Site.

D. Defendant Zanetti Brothers, Inc., incorporated in Idaho in 1972, is the successor in interest to the Zanetti Brothers partnership, which began operating within the Coeur d'Alene Basin in the 1930s. The Zanetti Brothers partnership owned or operated mining or milling related properties, including the Galena Mill, the Rex Mill, the Interstate-Callahan Mill, and the Osburn Mill, within the Coeur d'Alene Basin Site. Defendant currently owns former mining or milling related properties within the Coeur d'Alene Basin Site, including: the Zanetti Gravel Operations property; the Gertie site property; and the Bureau of Mines Impoundments site property. In addition, Defendant has transported ore and tailings for various mining companies to mining, milling or smelting facilities located within the Coeur d'Alene Basin Site.

E. Settling Defendant does not admit any allegations of fact contained in this Consent Decree or any liability to the United States or the Tribe arising out of the transactions or occurrences alleged in the complaints.

F. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1362 (federal-question jurisdiction suits "brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior"), 1367(a) and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, the Tribe and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or

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AND DEF. ZANETTI BROTHERS, INC. - PAGE  
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other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

#### IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Bureau of Mines Impoundments site property" shall mean the property owned by Settling Defendant as of the date of signature of this Consent Decree located between Interstate 90 and the South Fork Coeur d'Alene River, immediately east of Terror Gulch Road in Osburn, Idaho (Shoshone County Parcel Numbers MC 239 MS 3202A).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Coeur d'Alene Basin Institutional Controls Program" or "Basin ICP" shall mean the program administered by Panhandle Health District 1 that requires the use of contaminant management practices to minimize exposure of human and environmental receptors

to site-related contaminants of concern, as defined in Idaho Administrative Code IDAPA

41.01.01 Rules of the Panhandle Health District

(<http://adm.idaho.gov/adminrules/rules/idapa41/0101.pdf>).

e. "Coeur d'Alene Basin Site" shall mean Operable Unit 3 of the "Site," as defined in the EPA Record of Decision relating to Operable Unit 3 of the Site signed on September 12, 2002, by the Regional Administrator, EPA Region 10, or his delegate.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

h. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

i. "Effective Date" shall mean the date this Consent Decree is entered by the Court.

j. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

k. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "Gertie site property" shall mean the property owned by Settling Defendant as of the date of signature of this Consent Decree located along Canyon Creek, roughly 0.5 miles northeast of Burke, Idaho (Shoshone County Parcel Numbers MC 249 MC 512 MS 2211).

m. "Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

n. "Insurance Policies" shall mean all insurance policies issued to the Settling Defendant prior to 1988, together with any specific environmental insurance or pollution insurance policies no matter what date issued, however named or titled, including, but not limited to, the insurance policies listed on Appendix C to this Consent Decree, together with any and all additional pre-1988 insurance policies or specific environmental or pollution insurance policies-in which Settling Defendant is subsequently determined to have any interest.

o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

p. "Natural Resource Damages" shall have the meaning set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

q. "Natural Resource Trustees" shall mean DOI, USDA and the Coeur d'Alene Tribe.

r. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

s. "Parties" shall mean the United States, the Coeur d'Alene Tribe and Settling Defendant.

t. "Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

u. "Record of Decision" or "ROD" shall mean the EPA interim Record of Decision relating to Operable Unit 3 of the Site signed on September 12, 2002, by the Regional Administrator, EPA Region 10, or his delegate, and all attachments thereto. The interim ROD is published at <http://yosemite.epa.gov/r10/cleanup.nsf/basin/decision+documents>.

v. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

w. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

x. "Settling Defendant" or "Defendant" shall mean Zanetti Brothers, Inc.

y. "Settling Defendant's Property" shall mean all portions of the Site owned by Settling Defendant as of the date of signature of the Consent Decree by Settling Defendant, excluding the properties identified as Kootenai County, Idaho tax parcel numbers CK2420010020319651 (ZANETTI SUBDIVISION, LT, 2 BLK 1 URD LAKE, DISTRICT 1997 0205N04W), CK2420010030319652 (ZANETTI SUBDIVISION, LT, 3 BLK 1 URD LAKE, DISTRICT 1997 0205N04W), and CK2420010040319653 (ZANETTI SUBDIVISION, LT, 4 BLK 1 URD LAKE, DISTRICT 1997 0205N04W) located in Coeur d'Alene, Idaho.

z. "Site" shall mean the Bunker Hill Mining and Metallurgical Complex Superfund Site located in Northern Idaho.

aa. "State" shall mean the State of Idaho.

bb. "Transfer" shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

cc. "Tribe" shall mean the federally-recognized Indian tribe known as the Coeur d'Alene Tribe, including its departments, agencies and instrumentalities. The Tribe, which has a governing Tribal Constitution and Tribal Council duly recognized by the Secretary of the Interior, is an "Indian tribe" within the meaning of Section 101(36) of CERCLA, 42 U.S.C. § 9601(36).

dd. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

ee. "USDA" shall mean the United States Department of Agriculture and any



successor departments, agencies or instrumentalities of the United States.

ff. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

gg. "Zanetti Gravel Operations property" shall mean the property owned by Settling Defendant as of the date of signature of this Consent Decree and current location of Settling Defendant's construction supply business, including Redi-mix production and gravel crushing, located in Shoshone County, Idaho (Shoshone County Parcel Numbers C190100, C187350, C500390010, C187400, C187375 and C203100).

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objectives of the Parties are for Settling Defendant to make cash payments and provide other valuable consideration to resolve Settling Defendant's liability for Response Costs and Natural Resource Damages as provided in the Covenant Not to Sue by the United States and the Tribe in Section X, and subject to the Reservations of Rights by the United States and the Tribe in Section XI.

#### **VI. PAYMENTS AND OTHER CONSIDERATION**

5. Settling Defendants' Liability. EPA has incurred past response costs of more than \$183 million and expects to incur future response costs of more than \$2.05 billion, and the Natural Resource Trustees have assessed over \$800 million in potential natural resource damages, in connection with the Coeur d'Alene Basin Site. It is the position of the United States

and the Tribe that Settling Defendant is jointly and severally liable for the full amounts stated above. The cash payments made under Section VI shall be credited toward these amounts. This Consent Decree provides Settling Defendant with a Covenant Not to Sue by the United States and the Tribe (Section X), subject to the Reservation of Rights by United States and the Tribe (Section XI). However, the Coeur d'Alene Basin Insurance Recovery Trust will seek to satisfy Settling Defendant's remaining liability to the United States and the Tribe for the amounts stated above from the Insurance Policies.

6. Payment of Past Response Costs to EPA. Within 30 days of the Effective Date of the Consent Decree, Settling Defendant shall pay \$112,500 to EPA.

7. The total amounts to be paid pursuant to Paragraph 6 shall be deposited in the Bunker Hill Mining and Metallurgical Complex Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment to the Natural Resource Trustees. Within 30 days of the Effective Date, Settling Defendant shall pay \$37,500 to the Natural Resource Trustees.

9. Payments in accordance with Paragraphs 6 and 8 shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Account in accordance with EFT instructions to be provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Idaho.

10. At the time of each payment pursuant to this Section, Settling Defendant shall also send notice that payment has been made to the United States and the Tribe in accordance with Section XIX (Notices and Submissions). Such notice shall reference the Coeur d'Alene Basin Site, DOJ case number 90-11-3-128/7, and the civil action numbers 08-383-N-EJL and 09-664-N-EJL. For payments to EPA, the notice shall also reference EPA Region 10 and Site/Spill Identification Number 2Q. For payments to the Natural Resource Trustees, the notice shall also reference "Natural Resource Damages for the Coeur d'Alene Basin Site" and NRDAR Account No. 14X5198.

11. Materials. Settling Defendant shall supply a total of \$50,000 in "materials" to EPA, or to any party designated by EPA.

a. "Materials" are defined as any soil, gravel, sand, rock or other materials of acceptable quality to EPA, or its designee, customarily sold by Settling Defendant as part of its construction supply business.

b. EPA, or its designee, shall make all requests for materials within 24 months of the Effective Date of this Consent Decree. EPA, or its designee, will request materials from Settling Defendant with as much advance notice as it reasonably can, but in any event, at least 30 days in advance of the date that EPA, or its designee, requires the requested materials. EPA, or its designee, will make any request for gravel during the time period that Settling Defendant is crushing rock for the construction season. Settling Defendant shall provide EPA with written notice of the date rock crushing will start and end 30 days prior to the start of its rock crushing for the construction season.

c. The value of "materials" requested by EPA, or its designee, shall be determined by the price charged by Settling Defendant to project contractors for the particular materials as of the date of the request by EPA, or its designee, for such materials.

d. Within 7 days of a request from EPA, or its designee, for a certain type and quantity of materials, Settling Defendant shall provide EPA, or its designee, with a written calculation of the value of those materials, in accordance with subparagraph c. The written calculation shall include supporting documentation of the price charged to project contractors at the time of the request.

e. EPA, or its designee, shall pick up the materials, to be loaded on board truck, at Settling Defendant's Zanetti Gravel Operations Property located in Osburn, Idaho, or its facility located in Smelterville, Idaho, or as otherwise agreed by EPA, or its designee, and Settling Defendant.

12. Easement. Settling Defendant shall execute and record a perpetual, non-exclusive easement, granted to the State of Idaho, Department of Environmental Quality, its successors, assigns and contractors, for access across Settling Defendant's land identified as Shoshone County Parcel Numbers 48N04E-6250 and C-0000-017-6275, in substantially the form attached hereto as Appendix A. Such grant shall include the right to allow its agents and representatives, including the United States and Tribe, to use the easement for access purposes. The purpose of the easement is to allow construction of a road from Nuchols Gulch Road across the two parcels for access across the parcels using the road. The road will be used to evaluate, construct, operate and maintain a potential repository site or for access necessary to implement other response

actions at the Site. The approximate location of the easement is shown on the aerial photographs attached to Appendix A. Within 7 days of the Effective Date of the Consent Decree, Settling Defendant shall provide the State and EPA with a title report, which shows the title to the land to be free and clear of all prior liens and encumbrances that may interfere with the easement.

Settling Defendant shall use best efforts, in accordance with Paragraph 35(2) below, to obtain a release or subordination of any prior liens or encumbrances that may interfere with the easement.

Settling Defendant shall be responsible for all costs of drafting, surveying, preparing, recording or otherwise effectuating the easement. The easement shall be drafted to be enforceable under the laws of the State of Idaho. Within 14 days of the Effective Date of the Consent Decree, Settling Defendant shall submit the proposed easement to the State and EPA for approval, in consultation with the Tribe. Within 14 days of the State's and EPA's approval, Settling Defendant shall update the title report and, if it is determined that nothing has occurred since the effective date of the title report to affect the title adversely, record the easement with the appropriate land records office.

**VII. THE COEUR D'ALENE BASIN INSURANCE RECOVERY TRUST**

13. ... Settling Defendant shall fully comply with the Coeur d'Alene Basin Insurance Recovery Trust Contribution Agreement, which is attached to this Consent Decree as Appendix B and incorporated herein by reference.

14. Settling Defendant shall fully cooperate in the following tasks related to the Coeur d'Alene Basin Insurance Recovery Trust ("Trust"):

- a. complete a diligent, good faith search to identify any evidence

of Insurance Policies (including, but not limited to, a review of business records, insurance related invoices, Certificates of Insurance, accounting ledgers, correspondence, or any other insurance related documentation) in which Settling Defendant may have an interest within 30 days from the Effective Date of this Consent Decree, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the effective date of this Consent Decree);

b. take such reasonable actions and execute and deliver such documents and instruments as may be reasonably necessary or appropriate to transfer, convey, release, compromise, and/or assign Settling Defendant's interest pursuant to any or all of the Insurance Policies;

c. cooperate reasonably with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust;

d. identify any documents or sources of documents that, to the Settling Defendant's knowledge, may relate to operations, activities, or corporate histories of Settling Defendant, and its predecessor (Zanetti Brothers partnership), as related to the Site ("Site Records");

e. provide Trustee and the Trust's representatives with full access to Site Records; and

f. provide Trustee and the Trust's representatives with any other assistance reasonably necessary to accomplish the duties, purposes, and goals of the Trust, including but

not limited to the execution of any documents associated with the Trust and its recovery activities in a timely fashion.

**VIII . FAILURE TO COMPLY WITH THE CONSENT DECREE**

15. Interest on Late Payments. If Settling Defendant fails to make any payment under Section VI by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalties.

a. If Settling Defendant does not pay any amounts due to EPA under Paragraph 6 by the required date or does not comply with the requirements of Paragraphs 11 and 12, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$250 per violation per day that such payment is late.

b. If Settling Defendant does not pay any amounts due to the United States and the Tribe under Paragraph 8 by the required date or does not comply with the requirements of Paragraphs 13 and 14 of this Consent Decree or the terms of the Trust Contribution Agreement, attached hereto as Appendix B, Settling Defendant shall be in violation of this Consent Decree and shall pay to the United States and the Tribe, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$250 per day of such noncompliance. Settling Defendant shall pay 75% of the stipulated penalty to EPA and 25% to the Tribe.

17. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the United States and/or the Tribe.

All payments to EPA under this Section shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Coeur d'Alene Basin Site, EPA Region 10 and Site Spill ID Number 2Q, DOJ Case Number 90-11-3-128/7, and the civil action number 08-383-N-EJL. The Settling Defendant shall send the check (and any accompanying letter) to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

All payments to the Tribe under this Section shall be paid by certified or cashier's check made payable to the "Coeur d'Alene Tribe" and sent to:

Coeur d'Alene Tribe  
Finance Department  
850 A Street  
P O Box 408  
Plummer, ID 83851

The check, or a letter accompanying the check, shall identify the payment as "stipulated penalties" and shall reference the name and address of the party making payment, the Coeur d'Alene Basin site, the civil action numbers 08-383-N-EJL and 09-664-N-ELJ and this Consent Decree.

18. At the time of each payment, Settling Defendant shall also send notice that payment has been made to the United States and the Tribe in accordance with Section XIX (Notices and Submissions). Such notice shall include the information required by Paragraph 10 and shall identify payments as "stipulated penalties."



19. Penalties shall accrue as provided in this Section regardless of whether the United States or the Tribe has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

20. If the United States or the Tribe brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the Tribe for all costs of such action, including but not limited to costs of attorney time.

21. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States or the Tribe by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

22. Notwithstanding any other provision of this Section, the United States and the Tribe each may, in its unreviewable discretion, waive payment of any portion of its share of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payments as required by Section VI or from performance of any other requirements of this Consent Decree.

23. Stipulated penalties shall continue to accrue as provided in Paragraph 19, during any Dispute Resolution, but need not be paid until the following:

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a. If the dispute is resolved by agreement of the Parties or by a decision of the United States, in consultation with the Tribe, that is not appealed to the Court, Settling Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States and the Tribe within 30 Days of the Effective Date of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States and/or the Tribe prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

**IX. CERTIFICATION OF SETTLING DEFENDANT**

24. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States, including, but not limited to, providing access to documents where located, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation,

treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. has and will comply fully with any and all EPA and Tribe requests for information regarding the Site pursuant to Sections 104(e), 122(e)(3)(B), and 122(g)(8) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e)(3)(B), and 9622(g)(8); and

d. has and will fully disclose any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the United States or the Tribe upon request such insurance policies, indemnity agreements, and information.

**X. COVENANT NOT TO SUE BY UNITED STATES AND THE COEUR  
D'ALENE TRIBE**

25. Covenant Not to Sue by the United States and the Tribe. Except as specifically provided in Section XI of the Consent Decree (Reservations of Rights), the United States and the Tribe covenant not to sue or take administrative action against Settling Defendant pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt of Settling Defendant's payments as required by Section VI of the Consent Decree (Payment).

This covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI of the Consent Decree, provision of "materials" to EPA pursuant to Paragraph 11, recording of the easement pursuant to Paragraph 12 and compliance with the Coeur d'Alene Basin Insurance Recovery Trust Agreement, including assignment to the Trust of Settling Defendant's interest pursuant to the Insurance Policies; and b) the veracity of the information provided to the United States by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

**XI. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE COEUR D'ALENE TRIBE**

26. The United States and the Tribe reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States and the Tribe in Section X. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe reserve all rights against each Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability as a result of failure by Settling Defendant to exercise due care with respect to hazardous substances at the Site;

c. liability resulting from exacerbation by Settling Defendant of the release or threat of release of hazardous substances from the Site;

d. criminal liability;

e. liability based upon the ownership or operation of any portion of the Site outside of Settling Defendant's Property, after signature of this Consent Decree by the Settling Defendant;

f. liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

g. liability arising from the past, present and future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

**XII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

27. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, or the Tribe, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Idaho, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the Tribe pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

28. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

29. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against Settling Defendant.

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

30. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 29 (Waiver of Claims), the Parties expressly reserve any and all rights (including, but

not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the Tribe, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

31. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are natural resource damages and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Tribe or any other person except for the State; provided, however, that if the United States or the Tribe exercises rights under the reservations in Section XI (Reservation of Rights by the United States and the Coeur d’Alene Tribe), other than in Paragraphs 26.a. (claims for failure to meet a requirement of the settlement) and 26.d. (criminal liability), the “matters addressed” in this Consent Decree will no

longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

32. In any subsequent administrative or judicial proceeding initiated by the United States or the Tribe for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States and the Tribe set forth in Section X.

#### **XIV. ACCESS AND INSTITUTIONAL CONTROLS**

33.

If any real property located within the Site where access or land/water use restrictions are needed, is owned or controlled by Settling Defendant, Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including contractors and subcontractors, and the Tribe, and its representatives, including contractors and subcontractors, with access at all reasonable times to the real property within the Site, or such other real property, to conduct any response activity related to the Site, including, but not limited to the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;



2. Verifying any data or information submitted to the United States or the Tribe;
  3. Conducting investigations relating to contamination at or near the Site;
  4. Obtaining samples;
  5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
  6. Assessing Settling Defendant's compliance with this Consent Decree;
  7. Determining whether real property within the Site or real other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Consent Decree; and
  8. Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls.
- b. commencing on the date of lodging of this Consent Decree, Settling Defendant shall not use the real property within the Site, or such other real property, in any manner that EPA, in consultation with the Tribe, determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site.

34. Basin ICP. With respect to any real property located within the Site that is owned by Settling Defendant, Settling Defendant shall comply with the Basin ICP.

35. With respect to any real property located within the Site that is owned by Settling Defendant, Settling Defendant shall:

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(1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 33.a and (ii) grant the right to enforce land/water use restrictions set forth in Paragraph 33.b. The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA, in consultation with the Tribe: (i) the United States, on behalf of EPA, and its representatives, (ii) the State of Idaho and its representatives, and/or (iii) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(2) upon request by EPA, in consultation with the Tribe, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances that may interfere with the Proprietary Control (except when EPA waives the release or subordination of such prior liens and encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens and encumbrances). For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If, within 30 days of EPA's request for Proprietary Controls, Settling

Defendant has not obtained agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 35. The United States may, as it deems appropriate, assist Settling Defendant in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States, for all costs incurred, direct or indirect, by the United States in obtaining the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

(3) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

36. If EPA, in consultation with the Tribe, determines Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions or other governmental controls are needed, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

37. Notwithstanding any provision of this Consent Decree, the United States and the Tribe retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA and any other applicable statute or regulations.

#### **XV. DUE CARE AND COOPERATION**

38. Nothing in this Consent Decree shall be construed to relieve Settling Defendant of its duty to exercise due care with respect to hazardous substances at the Site or its duty to comply with all applicable laws and regulations.

39. Settling Defendant agrees to cooperate fully with EPA and the Tribe in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA and the Tribe agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize interference with Settling Defendant's operations by such entry and response. In the event that Settling Defendant becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, in addition to complying with any

applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and the Tribe of such release or threatened release, and for any such release or threat of release at or from any property owned or controlled by Settling Defendant within the Site, Settling Defendant shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release.

#### **XVI. RETENTION OF RECORDS**

40. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

41. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify the United States and the Tribe at least 90 days prior to the destruction of any such records, and, upon request by the United States or the Tribe, Settling Defendant shall deliver any such records to the United States or the Tribe. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the United States or the Tribe with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of

the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States or the Tribe in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States or the Tribe has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the Tribe pertaining to the Site shall be withheld on the grounds that they are privileged.

#### **XVII. DISPUTE RESOLUTION**

42. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Settling Defendant's failure to seek resolution of a dispute under this Section shall preclude the Settling Defendant from raising any such issue as a defense to an action by the United States or the Tribe to enforce any obligation of the Settling Defendant arising under this Decree.

43. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is

modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with the Tribe, shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, Settling Defendant invokes formal dispute resolution procedures as set forth below.

44. Formal Dispute Resolution. Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Tribe a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Settling Defendant's position and any supporting documentation relied upon by the Settling Defendant.

45. The United States and the Tribe shall serve joint or separate Statement(s) of Position within 45 Days of receipt of the Settling Defendant's Statement of Position. The United States' and the Tribe's Statement of Position(s) shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and/or the Tribe. The United States' Statement of Position shall be binding on the Settling Defendant, unless the Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.1.

46. The Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the Tribe, in accordance with Section XIX of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion

must be filed within 10 Days of receipt of the United States' and the Tribe's Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

47. The United States and the Tribe shall respond to the Settling Defendant's motion within the time period allowed by the Local Rules of this Court. The Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

48. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 44, the Settling Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

49. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 23. If the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XVIII. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY

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50. For any real property owned or controlled by Settling Defendant that is located within the Site, within 15 days of the Effective Date of this Consent Decree, Settling Defendant shall submit to EPA and the Tribe for review and approval a proposed notice to be filed with the land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site and that EPA selected an interim remedy for the Coeur d'Alene Basin Site on September 12, 2002. The notice shall also describe the land use restrictions, if any, set forth in Paragraph 24.b. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice(s) within 10 days of EPA's and the Tribe's approval of the notice(s). The Settling Defendant shall provide EPA and the Tribe with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

51. Settling Defendant shall at least 60 days prior to the Transfer of any real property located within the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (ii) to EPA and the Tribe regarding the proposed Transfer, including the name and address of the transferee, and the date on which the transferee was notified of the Consent Decree and Institutional Controls.

52. Settling Defendant may Transfer any real property located within the Site only if:  
(1) any Proprietary Controls required by Paragraph 35 have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant, the United States and the Tribe, to (i) allow access and restrict land/water use,  
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pursuant to Paragraphs 33.a and 33.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 35, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 35, and EPA and the Tribe have approved in writing the agreement. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph, Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States or the Tribe may seek the transferee's compliance with the agreement and/or assist the Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States or the Tribe, for all costs incurred, direct or indirect, by the United States or the Tribe regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

53. In the event of any Transfer of real property located within the Site, unless the United States and the Tribe otherwise consent in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls and to abide by such Institutional Controls.

#### **XIX. NOTICES AND SUBMISSIONS**

54. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete

satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the Tribe and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-128/7)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Cara Steiner-Riley  
Kelly Cole  
U.S. Environmental Protection Agency  
  
1200 Sixth Avenue  
Seattle, Washington 98101

As to the federal Natural Resource Trustees:

Barry Stein  
U.S. Department of the Interior  
805 SW Broadway Ste. 600  
Portland Oregon 97201

As to the Coeur d'Alene Tribe:

Phillip Cernera  
Lake Management Director  
Coeur d'Alene Tribe  
850 A Street  
P.O. Box 408  
Plummer, ID 83851

As to Settling Defendant:

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Zanetti Brothers, Inc.  
301 East Mullan Ave.  
Osburn, Idaho 83849

William F. Boyd  
RAMSDEN & LYONS, LLP  
700 Northwest Boulevard  
P.O. Box 1336  
Coeur d'Alene, Idaho 83814-1336  
*Counsel for Zanetti Brothers, Inc.*

As to the State of Idaho:

Darrell G. Early, Deputy Attorney General  
Office of the Idaho Attorney General  
Environmental Quality Section  
1410 N. Hilton  
Boise, ID 83706

**XX. RETENTION OF JURISDICTION**

55. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XXI. INTEGRATION/APPENDICES**

56. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Easement Form referred to in Paragraph 12.

“Appendix B” is the Coeur d’Alene Basin Insurance Recovery Trust Contribution Agreement.  
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"Appendix C" is the List of Insurance Policies.

**XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

57. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the Tribe reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

58. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XXIII. SIGNATORIES/SERVICE**

59. The undersigned representatives of Settling Defendants to this Consent Decree and the Tribe and the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

60. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the Tribe has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

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61. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XXIV. FINAL JUDGMENT**

62. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED



DATED: September 23, 2010

A handwritten signature in cursive script, reading "Edward J. Lodge".

Honorable Edward J. Lodge  
U. S. District Judge

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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of U.S., et al. v. Mascot Mines, Inc., et al., CV08-383-N-EJL; CV09-0664-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR THE UNITED STATES OF AMERICA

Date: 7/9/10

/s

IGNACIA S. MORENO

IGNACIA S. MORENO

Assistant Attorney General

Environment and Natural Resources Division

U.S. Department of Justice

Date: 7/13/10

/s

ERIKA M.

ZIMMERMAN

ERIKA M. ZIMMERMAN

Oregon Bar #055004

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

c/o NOAA, Damage Assessment

7600 Sandpoint Way, N.E.

Seattle, Washington 98115

Telephone: (206) 526-6608

Facsimile: (206) 526-6665

erika.zimmerman@usdoj.gov

THOMAS E. MOSS

United States Attorney

District of Idaho

NICHOLAS J. WOYCHICK

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Civil Chief  
U.S. Attorney's Office  
District of Idaho  
WGI Plaza IV  
800 Park Blvd., Suite 600  
Boise, Idaho 83712  
(208) 334-1211

Nick.Woychick@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matters of U.S., et al. v. Mascot Mines, Inc., et al., CV08-383-N-EJL; CV09-0664-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

Date: 6/24/10  
/s

DANIEL D. OPALSKI  
Director, Office of Environmental Cleanup  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Date: 6/14/10 /s  
CARA STEINER-RILEY  
KELLY COLE  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

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FOR THE COEUR D'ALENE TRIBE

Date: 8/6/10

/s

HOWARD A. FUNKE  
Special Counsel  
Coeur d'Alene Tribe  
Howard Funke & Associates, P.C.  
P.O. Box 969  
Coeur d'Alene, Idaho 83816-0969  
[hfunke@indian-law.org](mailto:hfunke@indian-law.org)

Date: 8/5/10

/s

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CHIEF J. ALLAN, Chairman  
Coeur d'Alene Tribal Council  
Coeur d'Alene Tribe  
P.O. Box 408  
Plummer, Idaho 83851

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FOR DEFENDANT ZANETTI BROTHERS, INC.

Date: 6/14/10

/s/  
HERBERT J. ZANETTI

Zanetti Brothers, Inc.

301 East Mullan Ave.

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Osburn, Idaho 83849

Date: 6/14/10

/s

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WILLIAM F. BOYD  
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700 Northwest Blvd.  
Post Office Box 1336  
Coeur d'Alene, Idaho  
(208) 664-5818

*Attorney for Zanetti Brothers, Inc.*

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